HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case

W.P. No. 415 of 2004 (S/S)

Ram Prakash (No. 860260095)

Vs.
Union of India & others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 24.4.2004

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL

AT NAINITAL

Writ Petition No. 415 of 2004 (S/S)

Ram Prakash (No. 860260095) … Petitioner

Versus

Union of India & others … Respondents

Hon'ble Rajesh Tandon J.

Heard Sri I.P. Gairola learned counsel for the petitioner and Sri P.C. Bisht learned Standing Counsel (Central).

By the present writ petition the petitioner has prayed for the issue of a writ order or direction in the nature of mandamus commanding and directing the respondents to pay the salary/disability w.e.f. 05.01.1997 to the petitioner.

Brief facts of the present writ petition according to the petitioner are that he had joined the Central Reserve Police Force as a constable on 01.04.1986. According to the petitioner on 13.03.1995, he got pain in the right side of the abdomen due to which he had gone under medical check up and at that time both kidney were normal.

Further, the petitioner has submitted that on 18.09.1995 the petitioner was admitted in Base Hospital II C.R.P.F. Hyderabad and on 04.11.1995 he had undergo for Nephrectomy test and ultimately he was discharged from hospital on 17.11.1995 with a advice to take rest for 60 days.

According to the petitioner on 09.06.1995, and ultrasound report was taken from M/s Chandan Scan Centre, Secundrabad in which it was mentioned that the left kidney of the petitioner was absent. The petitioner was shocked to know the same as the Base Hospital, C.R.P.F. had not informed him about this when he was discharged.

On 03.01.1997, the Commandant 99 Battalion, R.A.F. issued a letter in favour of the petitioner; it was mentioned therein that the petitioner is hereby retired on invalidation. Brief case history dated 16.09.1996 shows

that the petitioner was recommended that he may be invalidated our and rehabilitated with some non-strenuous Job. Till such time he may be given light duty. The brief case history in R/o 860260095 CT Ram Prakash of 99 RAF BN, CRPF described as under:-

> *"After investigations it was diagnosed that he was having bilateral hydrenephrosis with left pelvis renal calculus on right side and vescico renal calculus on left side.*
>
> *The patient was operated for pelvi-renal calculus on right side but nephrectomy right was done due ton heavy bleeding during operation and as a life saving measure on 04.11.1995.*
>
> *The individual was advised light duty when he rejoined duty.*
>
> *The individual is now serving on a single kidney. The kidney function of left side is normal. With the present condition he is not fit to undertake strenuous exercises and hard work.*
>
> *Hence it is recommended that he may be invalidated out and rehabilitated with some non-strenuous Job. Till such time he may be given light duty.*
>
> The order of 03.01.1997 shows to the following effect:-
>
> *No. 860260095 Ct. Ram Prakash of 99BN RAF/CRPF who appeared before a Medical Board, constituted under the order of CMO, Base Bospital – II CRPF, Hyderabad on 28.10.1996 for medical examination has been declared completely and permanenely incapacitated for further service of any kind in CRPF in consequence of NEPHRECTOMY (LEFT). The medical board has resided over by Dr. R.K. Mohanty, CMO (SG). Accordingly, he was served with a notice under the provision of Art. 49 of CSR Vol. I communicating the verdict of medical authority and proposed retirement on invalidation vide this office order of even No. dated 04.12.1996. The notice was served to the individual on 04.12.1996.*

Apart from the payment of disability pension, the petitioner has also represented before the authorities for appointment on any other post. The petitioner has stated in paragraph 9 to the writ petition is as under:-

"that the petitioner has continuously represented before the concerned authorities for an appointment on any other post or to pay him disability pension as the petitioner has committed no mistake and his left kidney was taken out by the doctors concerned in C.R.P.F. Hospital for the reason best known to them."

Section 47 of the Persons With Disabilities (Equal Opportunities Protection or Rights and Full Participation) Act, 1995 reads as under:-

"47(1) No establishment shall dispense with or reduce in rank an employee who acquire a disability during his service.

Provided that, if an employee after acquiring disability is not suitable for the post he was holding could be shifted to some other post with the same pay scale and service benefits.

Provided further that if it is not possible to adjust the employee against any post he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability.

Provided that the appropriate Government may having regard to the type of work carried on in any establishment by notification and subject to such conditions, if any, as may be specified in such notification exempt any establishment form the provisions of this sections."

It has been held in the case of Kunal Singh Vs. Union of India and another (2003) 4 SCC 524 where the Apex Court has given the benefit of section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) act 1995. The observations of the Apex Court are quoted below:-

"The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of the section reads "no establishment shall dispense with or reduce in rank, an employee who

acquire a disability during his service." The section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotions shall be denied to a person merely on the ground of his disability as is evident from sub section (2) of Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the objects of the Act and serve its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.

Learned counsel for the respondent Sri P.C. Bisht has submitted that the respondents will consider the case of the petitioner in accordance with the Rules.

In view of the aforesaid facts the respondents are directed to pass a reasoned order within six weeks from the filing of the certified copy of the order, after hearing the petitioner and decide the matter in accordance with the Rules.

With these directions, the writ petition is disposed of accordingly.

Sd/-

24.4.2004
ASWAL